IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.
No. 205

HERMANN WEINMANN,

Appellant,

vs.

J. HOWARD MCGRATH, Attorney General of the United States, as Successor to Alien Property Custodian,

Appellee,

Petition for Rehearing and Consideration of the Record on Certiorari.

This case was appealed to this Court by Hermann Weinmann, an American citizen and resident of the State of New Jersey, from a final judgment of the District Court of Appeal, Second Appellate District, State of California, and the highest State Court having jurisdiction of the issues.

On October 8, 1951 this Court entered its memorandum order, as follows:

> "PER CURIAM: The motion to dismiss is granted and the appeal is dismissed for the want of a substantial federal question. Mr. Justice Black dissents."

By order entered October 18th, time to file petition for rehearing was extended to and including November 1, 1951.

The above order of dismissal does not indicate the appeal record was considered as an application for a writ of certiorari in conformity with Title 28, U. S. C., Section 2103, Appellant therefore petitions this Court for consideration of the record on appeal as an application for writ of certiorari. It is respectfully insisted upon that this case is one of first instance.[1] The judgment of the state Court is definitely in conflict with principles heretofore decided by this Court; and in conflict with exercise of the authority and power granted the President, as Commander in Chief of the Armed Forces.

On appeal by assignments of error, timely raised and presented [Tr. p. .....], Appellant claimed the judgment of the state Court, and Section 259 of the California Probate Code, as construed and applied to the facts, were repugnant to and in violation of the constitution of the United States, and the clear and unequivocal provisions of international agreements made by the President with our Allies of World War II.

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[1]The record indicates that other cases in California involve these issues. It will not be denied that the Alien Property Custodian has vested the interests of devisees and beneficiaries in approximately 200 probate cases. Several of these now pending involve the identical issue here presented.

The subject matter of the issues before this Court may be summarized as follows:

Appellee's Motion to Dismiss (p. 11) states:

> "Here neither appellant or appellee question the validity of the Allied Agreements and declarations. The parties are merely at issue concerning the impact of these documents on the rights of German enemy aliens to inherit in California."

While true, in part, this does not state the complete issue. Improvidently as Appellant may have stated the issues in his jurisdictional statement, and in opposition to the motion to dismiss, there is inherently in the issue, as presented, the question:

> Under the Constitution of the United States what governmental authority shall determine "the impact"?

Appellee, despite the responsibility conferred upon him by Executive order (Motion to Dismiss, p. 2—footnote) insists that the state Courts assume the authority. Appellant submits that the federal Constitution gives to the office of the President of the United States the exclusive power to determine the rights of the enemy aliens in this case.

It is established in this case that the applicable international agreements (Jur. St. pp. 35-38); referred to by Appellee, were made by the President in the exercise of American war power, and "fall as clearly in the realm of political decisions as all other aspects of military alliances

in furtherance of the common objectives of victory." (*Hiroto v. MacArthur,* 338 U. S. 197, 208.) In the *Hiroto* case the opinion of the Court just quoted mentions the Potsdam Agreements. Among the agreements made at Potsdam, is the Allied Governments Agreement Imposing Additional Requirements on Germany. (Jur. St. p. 38.) This agreement expressly suspends all treaties to which Germany had been a party. By necessary inference the President in this "military alliance for the common objectives of victory," revoked the reciprocal rights of inheritance granted to nationals of the United States and Germany by the treaty of 1925. (*Clark v. Allen,* 331 U. S. 503.)

Accepting the statement in Appellee's motion to dismiss, that the issue in this case concerns "the impact of these documents on the rights of German enemy aliens to inherit in California," Appellant urges that the determination of this impact is not a judiciable question. (*Hiroto* case, *supra.*) The agreements to revoke reciprocal rights "fall clearly in the realm of political decisions."

In the *Hiroto* case involving provisions of the Potsdam agreements affecting Japanese nationals; and in other cases coming before this Court on petitions for writs of *habeas corpus* in the matter of Germans, this Court has scrupulously observed the constitutional authority of the President, and has refused to judicially determine the "impact" of his war time international agreements upon the civil liberties claimed by alien enemies affected by such agreements.

The issues here require a determination of the "impact" of these identical agreements upon the rights of alien enemies in Germany to inherit property in California. It has been Appellant's position before this Court, and in the state Courts, that the rights of alien enemies to personal property affected by these agreements "fall as clearly in the realm of political decisions," as the rights of these same aliens, or others like them, to personal liberty, affected by these "military alliances." The judicial branches of our state and federal government are without authority to determine these political matters, under the federal constitution.

It was presented on appeal, and in this petition that the assumption by the state Court of the authority to determine these political matters constituted a denial to Appellant of the right to have such determinations made by the political branch of our national government, under the federal constitution, and the decisions of this Court. (See Appellant's Brief Opposing Motion to Dismiss.)

We are not here dealing with dual state and federal sovereignty in peace time. No issue was raised in this case which denies to the state of California the legislative power to grant rights of succession or inheritance to property in California; nor has any issue been raised as to the jurisdiction of the state Courts to interpret and apply the probate laws of California, in the absence of a national foreign policy, to the contrary, or the exercise of power of national sovereignty granted exclusively to the executive.

Conclusion.

Appellant respectfully requests that a rehearing be granted and that Appellant be given the right to file briefs and present oral argument upon the record; and that the record be considered as an application for writ of certiorari; and for such other and further order of this Court as may be deemed proper in the premises.

Respectfully submitted,

GEORGE T. GOGGIN,
Attorney for Appellant,

PIERCE LONERGAN,
Of Counsel.

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Appeal From the District Court of Appeal of the State of California, Second Appellate District.

Certificate of Good Faith of Petition for Rehearing and Consideration of the Record on Certiorari.

In support of petition for rehearing and consideration of the record on certiorari, in the above entitled matter, the undersigned counsel for Appellant, and this Petitioner, hereby states and certifies that the said petition is made in good faith and not for the purpose of delay.

GEORGE T. GOGGIN,

Counsel for Appellant.